
REACTION

THE PRICE OF LEGAL EDUCATION

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The American Bar Association has created a Task Force on The Future of Legal Education in response to the widely shared sense that the price of the education required for admission to our profession has become excessive and a grave burden on many law students, the profession, and the public good. In August 2013, President Obama spoke to the problem by advancing a suggestion long advanced by others that law students be permitted after only two years of study in law school to sit for the required licensing examination. This idea was not new; indeed, it was not new when advanced by the Carnegie Foundation in 1921 or again by the Ford and Carnegie Foundations in 1971.

Inflation in the price of higher education is not limited to law schools. The Higher Education Act of 1965, which established the guaranteed student loan fund, proved to be a powerful stimulus to higher pricing. Its authors planned that banks would make loans needed by college students to pay tuition while the federal treasury would guarantee repayment. This plan seemed to most at the time to be a spectacularly good idea; the Act replicated “the GI Bill,” which had rewarded military veterans of World War II with subsidized higher education and had been tailored to bring more citizens into the middle class. In bringing more citizens into the middle class, the Act was part of the War on Poverty that was a feature of the Cold War.

Alas, Congress failed in 1965 to notice that colleges and universities were being enabled to raise tuition. In 1970, I heard Senator Moynihan forecast that university tuition would “go out the roof” as a result of the 1965 law. It did. More students were able to enter college and law school, but the price they paid rose steadily in response to their enlarged ability to pay. Thus, a trillion dollars in student loans is now owed to the federal treasury.

Universities spent much of that additional tuition to employ more professors and administrators at higher salaries and to house them in larger and fancier offices. At least two university presidents received more than three million dollars in compensation for their services in 2012. That amount is *in real dollars* many times more than any university president received in 1965.

Tuition at many law schools, public as well as private, was similarly inflated. Law schools roughly tripled faculty salaries (in real dollars) and added many professors and administrators. And a lot of tuition revenue has been spent on scholarships for law students. Alas, as

the ABA Task Force has noticed, relatively few scholarships are awarded by most schools to admission applicants in financial need. Much of the scholarship money available at most law schools is awarded to applicants with high undergraduate grades and high standardized test scores. A cause of that trend has been the popular ranking of law schools on the basis of the admissions credentials of their entering classes. A dean may see little choice but to use the school's money to protect its institutional status by attracting well-credentialed students. Thus, current financial assistance to law students at many schools has been aptly depicted as a "Reverse Robin Hood" system: students with modest prospects for remunerative professional careers are charged more so that those likely to receive higher incomes will be charged less and thus be attracted to their benefactor-schools. It seems that the poor borrow more so that the rich can borrow less.

For many years rising law school tuition was for some students relieved by a similar inflation in the rising salaries paid by private law firms. That inflation also began in the 1960s and proceeded at the same or perhaps an even higher pace than tuition. This period of salary growth seems to have been a secondary consequence of the contemporaneous elevation of the salaries of corporate executives. The extraction of wealth for the American business executive increased steadily after the ending of the Cold War, which relieved our concern for the inclusion of lesser folks in the prosperity of their times, and as the monetary scale of many major business transactions rose. The decline of effective securities regulation and the advent of investment brokerage funds may also have facilitated the rise in executive compensation by making it less transparent to those affected. And progressive taxation was relaxed. Law firms benefited from these changes as more highly paid executives became less resistant to generous compensation of elite law firms. The steep rise in the hourly price of legal services charged by major firms enabled law faculties to share the benefits enjoyed by their alumni.

But by 2010, the inflation of the price of fees paid for legal services peaked. Many big law firms were in decline or even failing because clients in a time of stress became less willing to pay. New methods of management emerged and reduced the market demand for expensive lawyers.

Thus, many graduates are now unable to find employment enabling them to repay their huge loans. Some law schools may be failing due to lack of tuition income resulting indirectly from the inability of many graduates to find jobs. So what can or should be done? That is the question posed by the ABA to its Task Force.

The proposal endorsed by President Obama for reducing the number of years in law school required of applicants to the bar remains one sound option responsive to the concerns expressed by the Task

Force. Not for the first time, this author endorses that proposal. Its aim is to apply simple economics to the higher education market. Indeed, the marketplace might promote individual welfare by enabling each student to assess the worth to himself or herself of each additional semester or year of professional education. Let the consumers of legal education assess the worth of each year (or semester?) invested in higher education in an openly competitive marketplace in light of each year of academic experience! And let those completing two years of law study sit for the licensing examination and, if successful on the examination, proceed to provide legal services for those willing and able to pay them.

Other options could allow ambitious students lacking funds to enter the marketplace of legal services. One possibility is to return to practice common in the twentieth century of allowing students to skip the fourth year of college and proceed on to law school after three years as undergraduates. Some law schools encouraged that choice by awarding a bachelor of arts (B.A.) degree with a major in law to students using the first year of law school to complete their four years of undergraduate study. Such a degree is not worthless in the marketplace, and its value may in fact now be enlarging as legal services to business are reorganized, employing more paralegals to perform less demanding tasks, in order to reduce their price.

Another possibility is to return to the twentieth century laws of many states allowing their law schools to award a bachelor of law (LL.B.) after two years of study. Many schools would return to that format if states' laws again allowed such graduates to sit for the bar exam. If it were deemed necessary, the licensing examination could be delayed for one year while an applicant added a year of paraprofessional or supervised experience to his or her qualifications. Or perhaps a year or more of law study could be reduced in cost by the use of electronic technology that is increasingly available.

Reductions in the price of entry into the profession may, alas, reduce the social status of the profession. But reductions can be justified by the continuing need of citizens for more legal services. It is reported that 2.3 million civil litigants in New York courts in 2010 were not represented by counsel. Similar conditions abide in most other states. Publicly funded legal aid is available to some citizens, especially those charged with crimes, and many lawyers perform some needed professional services without charge. But the services available are far from sufficient to protect the rights of all our citizens. Lawyers are absent from many small counties and from many urban neighborhoods. There will thus continue to be a potential market for less expensive legal services, but one in which few lawyers can expect compensation sufficient to pay off huge loans.

To be sure, there would remain a place for the third year of law school and even a fourth year. But those continuing their studies will

be those pursuing special interests offering promise of compensation, or who cherish academic status for its noneconomic value.

The law governing these matters is in the hands of the state supreme courts and legislatures. In the past, they have generally been sensitive to the recommendations of bar associations favoring ever-rising requirements for entry into the profession, recommendations motivated by the desire to assure high social status for members of the profession. California stands out as a state resistant to pressure from the organized bar to elevate the profession's status with longer stints in law school. There are scores of law schools in that state, and many offer two-year bachelor of law degrees. It seems that the time has come for other states to follow California's lead.